THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION Nos. 15388 & 15449 of 2000

08-12-2005

Between:

Shri. Dhanji Ramji Chheda & another.

..... PETITIONERS

AND

Income Tax Department, Tax Recovery officer-II, Hyderabad & Others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION Nos. 15388 & 15449 of 2000

COMMON ORDER: (Per Hon'ble Sri Bilal Nazki, J)

Heard learned counsel for the parties.

These two writ petitions are disposed of by this common order, as they are inter-connected.

Writ petition No.15449 of 2000 was filed by the Bank and the main respondent is The Tax Recovery Officer-II, Income Tax Department. Notice of auction of the property of the writ petitioner in writ petition No.15388 of 2000, is challenged in both the writ petitions.

The case of the petitioner in writ petition No.15449 of 2000 is that the property was mortgaged to the Bank and the Bank had advanced loan to the owner as early as on 01.07.1996. The borrower became a defaulter and an O.A. was filed, being O.A.No.237 of 1999 by the Bank before The Debts Recovery Tribunal, Bangalore. This was transferred to Hyderabad and was registered as O.A.No.1971 of 1999. An order of injunction not to alienate the property, was passed on 31.03.1999. On 21.6.2000, Tax Recovery Officer issued a notice to the Bank to file objections on or before 27.06.2000 as to why the property be not attached, as the owner of the property was in arrears of Income Tax. Without passing any order, after considering the objections of the Bank, impugned notice was issued on 06.08.2000.

Whether a property, which is mortgaged and a charge is created in favour of the Bank, could be sold for arrears of Income Tax or not, would have been the main question ought to have been decided. In the counter-affidavit, the respondent No.1 has stated that the Bank's objections were received and therefore, in the sale notice, it was stated that the property in question was mortgaged to the Bank. That would not amount to deciding the objections made by the Bank. The Income Tax authorities were bound to consider the objections of the Bank, which had an interest in the property, as it had advanced huge amounts to the owner by way of loan. In view of these submissions in the counter, we feel that the question whether the Income Tax authorities could attach and sell the property, which was mortgaged to the Bank, may not be necessary to be decided at

this stage, as the Tax Recovery Officer has not so far taken a decision over the objections made by the Bank.

Therefore, while setting aside the auction notice, we direct the respondent No.1 to dispose of the matter by considering the objections filed by the Bank. He may pass appropriate orders in accordance with law within a period of two weeks from the date of receipt of a copy of this order, after giving notice to the Bank.

Now, coming to writ petition No.15388 of 2000, the petitioner is admittedly a defaulter with the Bank and also is liable towards the Income Tax, therefore, we do not consider that he is entitled to any relief from this Court. However, since the auction notice has already been quashed in writ petition No.15449 of 2000, no further orders are necessary to be passed in this writ petition.

Accordingly, writ petition No.15449 of 2000 is allowed, while writ petition No.15388 of 2000 is dismissed. No order as to costs.

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(BILAL NAZKI, J)

8th December 2005

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(S.ANANDA REDDY, J)

ajr